IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.8393 OF 2005

Sayaji P. Rane ...Petitioner.

Versus

The State of Maharashtra
and Ors. ...Respondents.

Shri Pratap Patil for the Petitioner.
Shri D.A.Patil, A.G.P for State.

CORAM : S.C.DHARMADHIKARI,J.

DATE : 31st JANUARY, 2006.

P.C. :

. Rule.

2. Heard Shri Patil learned Counsel appearing for the petitioner. The service on the respondents is complete. At the request of Shri Patil, respondent Nos.6 to 10 are deleted.

3. The petitioner-original plaintiff is aggrieved by the refusal of the trial Court in permitting him to amend the plaint in Regular Civil Suit No.270 of 2004.

4. With the assistance of Shri Patil I have perused the plaint and the reliefs claimed therein. I have also perused the order passed below Exh.5 and the judgment delivered on 26th October, 2004 in Misc.Civil Appeal No.250 of 2004.

5. From a perusal of these materials as also from the application for amendment made, it is clear that the documents which have been produced during the course of hearing of the Misc.Civil Appeal forms the basis of amended pleas. The petitioner desires to bring on record these documents and make appropriate submissions to challenge their authenticity, validity and legality.

6. The trial Court has completely misread the application and the objections thereto. The application for amendment neither changes the cause of action nor can be said to be lacking in bonafides. The developments with regard to handing over of possession on the basis of a Panchnama are sought to be incorporated. The order passed by the trial Court reflects total non-application of mind to the settled principles which have to be applied while considering applications for amendment of pleadings. Once the trial Court is of the opinion that the amendment is not changing the original cause of action nor can be said to be lacking in bonafides, then applying liberal principles, the amendment application should have been granted. Accordingly, the following order :

7. ORDER :

1. The Rule is made absolute in terms of Prayer Clause ‘B’.

2. Exh.87 (Application for amendment to the plaint) stands granted.

3. Amendment to be carried out within a period of two weeks. Amended plaint to be served within a period of four weeks from the date of carrying out of the amendment. Additional Written Statement to be filed within a period of six weeks from the date of receipt of the amended copy.

4. Plaintiff to pay costs quantified at Rs.1500/- (Rs.Fifteen Hundred Only) to the defendants, within two weeks.

(S.C.DHARMADHIKARI,J.)